

Erin K. Olson, OSB 934776

eolson@erinolsonlaw.com

Law Office of Erin Olson, P.C.

2014 N.E. Broadway Street

Portland, OR 97232-1511

Telephone 503-546-3150

Fax 503-548-4435

Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

MICHAEL G. SCHWERN, Plaintiff, v. NÓIRÍN PLUNKETT, Defendant.		Case No.: 3:14-cv-00146- PK DECLARATION OF NÓIRÍN PLUNKETT
--	--	---

I, Nóirín Plunkett, under penalty of perjury under the laws of the State of Oregon and the United States, hereby declare as follows:

1. I am the defendant named herein. I make this declaration from my own personal knowledge, and if called to testify in open court, would testify as set forth herein.

2. I moved to Portland in November of 2011 to be with the plaintiff. We were married November 12, 2011, and made our home in Portland.

3. On or about November 24, 2012, plaintiff sexually assaulted me in our home. I told a mutual friend what had happened, and she convinced plaintiff to relocate to some friends' house.

4. We continued our relationship while living apart. However, plaintiff continued to engage in physically, sexually and emotionally abusive behavior toward me, leading me to go to my doctor at one point in June of 2013, and eventually to seek a divorce.

5. On September 19, 2013, plaintiff and I filed for divorce, and agreed to meet at my home afterward for dinner. After plaintiff arrived at my residence, he forced me to perform oral sex, had sexual intercourse with me despite my repeated objections, choked me with his hands, and penetrated my vagina with a knife. After plaintiff left, I contacted a friend who arranged for transport to the emergency room, and once there, the police were contacted and responded. I underwent a sexual assault forensic examination, and my injuries were photographed.

6. I learned that plaintiff had been bailed out on September 20, 2013, and I left the following morning for Massachusetts. I have been residing in Massachusetts with friends since that time.

7. After speaking with police and prosecutors, I decided to try and put plaintiff and my experiences with him behind me, and on or about October 23, 2013, I told the prosecutors I did not want to proceed with a criminal case.

8. On November 12, 2013, I received an e-mail from plaintiff asking to talk to me on our anniversary. Although the e-mail itself was not threatening, it made me fearful because of plaintiff's previous abuse of me. I eventually decided to apply for a restraining order, and did so on November 21, 2013. A true copy of the affidavit I filed in support of the restraining order is attached hereto as Exhibit 1.

9. On December 12, 2013, an attorney named David Eisenstadt appeared for plaintiff to contest the issuance of the restraining order, and was unsuccessful. A true copy of the restraining order is attached hereto as Exhibit 2.

10. On January 27, 2014, which was my birthday, I received a delivery of six white roses at my temporary residence in Cambridge, Massachusetts. I believed they had been sent by plaintiff because we had shared an interest in World War II history, and at one time had discussed the story of the execution of six leaders of White Rose, a German resistance group. I contacted the police and reported my suspicions, and was told that the flowers had been ordered online by "Michael S." A true copy of the police report as provided to me is attached as Exhibit 3.

I declare under penalty of perjury under the laws of the United States of America and the State of Oregon that the foregoing is true and correct.

EXECUTED this 20th day of February, 2014.

A handwritten signature in black ink, appearing to read 'N Plunkett', with a stylized flourish at the end.

Nóirín Plunkett

AFFIDAVIT

Describe in detail the most recent incidents of abuse. The Judge requires as much information as possible, such as what happened, each person's actions, the dates, locations, any injuries, and any medical or other services sought. Also describe any history of abuse, with as much of the above detail as possible.

On or about Nov 12th, 2013, the Defendant Michael Schwern, my ex-husband sent me an email asking me to talk to him on our anniversary. Although the email was not threatening in nature, it put me in fear of harm because of abuse previously sustained in the relationship, dating back to at least 24th Nov 2012. On that date, Michael raped me at our shared home. I told a mutual friend who made clear to him that this was unacceptable. He immediately moved out of our shared home and into a house with friends a few blocks up the street. Michael and I continued to have a relationship throughout this time including travelling and speaking at conferences together. When he was depressed, he would frequently blame me, and I was often afraid that he would hurt me. During these arguments, he often pushed or shoved me, hurting me. He forced me to have sex with him despite my objections on several ~~occasions~~ occasions. On June 24th after one such encounter I went to my doctor as I was afraid that he would seriously hurt me if I remained. He had sent threatening text messages over the previous weekend, and I was also afraid that he would try to cause

→ "Where are you? We need to go. Get out here now or I will beat you so hard you can't walk."

If more space is needed, attach additional pages and check this box: ☒

I declare under penalty of perjury that all statements of fact made above, and in any additional pages attached, are true.

DATE SIGNED

11/21/13

PLAINTIFF'S SIGNATURE

x N Plunkett

WITNESSED BY

x

PRINTED NAME OF WITNESS

TITLE/RANK OF WITNESS

EXHIBIT

PAGE 1 OF 2

AFFIDAVIT

Describe in detail the most recent incidents of abuse. The Judge requires as much information as possible, such as what happened, each person's actions, the dates, locations, any injuries, and any medical or other services sought. Also describe any history of abuse, with as much of the above detail as possible.

On or about 20 the Defendant

problems with my immigration status. On September 19th, we filed for divorce, and planned to share dinner at my home. When he came to my home, he said that he was not hungry, but he wanted to talk. We went to my bedroom, where he forced me to perform oral sex and then had intercourse with me despite repeated objections. During this time, he choked me with his hands. He also penetrated me with a knife that was near my bed. I thought he might kill me. I left Oregon to escape the abuse, and I am concerned because of his contact with me and mutual friends that he may try to follow or further abuse me.

If more space is needed, attach additional pages and check this box: ☐

I declare under penalty of perjury that all statements of fact made above, and in any additional pages attached, are true.

DATE SIGNED

11/21/13

PLAINTIFF'S SIGNATURE

x N Plunkett

WITNESSED BY

PRINTED NAME OF WITNESS

TITLE/RANK OF WITNESS

x

EXHIBIT

PAGE

2 OF 2

ABUSE PREVENTION ORDER
(G.L. c. 209A) Page 1 of 2

DOCKET NO.
1352R0337

TRIAL COURT OF MASSACHUSETTS



Plaintiff's Name Noirin Plunkett	DEF. INFO.	Defendant's Name & Address Michael Schwern 2043 NE Rodney Ave. Portland Oregon OR 101 NE Cook St. Portland, Oregon	Alias, if any
Name & Address Of Court Cambridge District Court 4040 Mystic Valley Parkwa Medford, MA 02155		Date of Birth 4/20/75	Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F Place of Birth Huntington, NY
		SS # (Last four digits only) XXX-XX- 3572	Daytime Ph # (412) 608-3812
			Cell Phone # ()

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE punishable by imprisonment or fine or both.

A. THE COURT HAS ISSUED THE FOLLOWING ORDERS TO THE DEFENDANT: (only those items checked shall apply)

- ☒ This Order was issued without advance notice because the Court determined that there is a substantial likelihood of immediate danger of abuse.
- ☐ This Order was communicated by telephone from the Judge named below to: Police Dept. _____ Police Officer _____
- ☒ 1. **YOU ARE ORDERED NOT TO ABUSE THE PLAINTIFF** by harming, threatening or attempting to harm the Plaintiff physically or by placing the Plaintiff in fear of imminent serious physical harm, or by using force, threat or duress to make the Plaintiff engage in sexual relations.
- ☒ 2. **YOU ARE ORDERED NOT TO CONTACT THE PLAINTIFF**, in person, by telephone, in writing, electronically or otherwise, either directly or through someone else, and to stay at least 100 yards from the Plaintiff even if the Plaintiff seems to allow or request contact. The only exceptions to this order are: a) contact as permitted in Sections 8, 9, 10 and 11 below; or b) by sending the Plaintiff, by mail, by sheriff or by other authorized officer, copies of papers filed with the court when that is required by statute or court rule.
- ☒ 3. **YOU ARE ORDERED TO IMMEDIATELY LEAVE AND STAY AWAY FROM THE PLAINTIFF'S RESIDENCE**, except as permitted in Sections 8 and 10 below, located at 1107 Cambridge St. Cambridge, MA or wherever else you may have reason to know the Plaintiff may reside. The Court also **ORDERS** you (a) to surrender any keys to that residence to the Police; (b) not to damage any belongings of the Plaintiff or any other occupant; (c) not to shut off or cause to be shut off any utilities or mail delivery to the Plaintiff; and (d) not to interfere in any way with the Plaintiff's right to possess that residence, except by appropriate legal proceedings.
- ☐ If this box is checked, the Court also **ORDERS** you to immediately leave and remain away from the entire apartment building or other multiple family dwelling in which the Plaintiff's residence is located.
- ☒ 4a. **YOU ARE ORDERED TO STAY AWAY FROM THE PLAINTIFF'S WORKPLACE** located at Eucalyptus Systems
- ☒ 4b. **YOU ARE ORDERED TO STAY AWAY FROM THE PLAINTIFF'S SCHOOL** located at 6755 Hollister Ave.
- 5a. **THE COURT ORDERS** that the Plaintiff's residential address not appear on the order. Goleta, CA
- 5b. **THE COURT ORDERS** that the Plaintiff's workplace address not appear on the order.
- 5c. **THE COURT ORDERS** that the Plaintiff's school address not appear on the order.
6. **CUSTODY OF THE FOLLOWING CHILDREN IS AWARDED TO THE PLAINTIFF:**

	A G E		N A M E		A G E

7. **YOU ARE ORDERED NOT TO CONTACT THE CHILDREN LISTED ABOVE OR ANY CHILDREN IN THE PLAINTIFF'S CUSTODY LISTED BELOW**, either in person, by telephone, in writing, electronically or otherwise, either directly or through someone else, and to stay at least _____ yards away from them unless you receive written permission from the Court to do otherwise.
- ☐ You are also ordered to stay away from the following school(s), day care(s), other: _____

	A G E		N A M E		A G E

8. **VISITATION WITH THE CHILDREN LISTED IN SECTION 6 IS PERMITTED ONLY AS FOLLOWS** (may be ordered by Probate and Family Court only):

- ☐ Visitation is only allowed if supervised and in the presence of _____ (name) at the following times _____ to be paid for by _____ (name)
- ☐ Transportation of children to and from this visitation is to be done by _____ (name) (third party), and not by you.
- ☐ You may only contact the Plaintiff to arrange this visitation. Contact may be made only by ☐ phone, ☐ e-mail, ☐ text, ☐ other _____

9. YOU ARE ORDERED TO PAY SUPPORT IN THE FOLLOWING MANNER:

- ☐ \$ _____ child support per _____ [week/month] by income withholding through the Department of Revenue. Defendant shall send payments to DOR at P.O. Box 55144, Boston, MA 02205-5144 until employer deductions begin.
- ☐ \$ _____ child support per _____ [week/month] directly to the Plaintiff by mailing payments to _____
- ☐ \$ _____ support for the Plaintiff per _____ [week/month] directly to the Plaintiff by mailing payments to _____
- ☐ Other orders: _____

1. **YOU MAY PICK UP YOUR PERSONAL BELONGINGS** in the company of police at a time agreed to by the Plaintiff.

1. **YOU ARE ORDERED TO COMPENSATE THE PLAINTIFF** for \$ _____ in losses suffered as a direct result of the abuse, to be paid in full on or before _____, 20____ ☐ by mailing directly to the Plaintiff ☐ through the Probation Office of this Court.

2. **THERE IS A SUBSTANTIAL LIKELIHOOD OF IMMEDIATE DANGER OF ABUSE. YOU ARE ORDERED TO IMMEDIATELY SURRENDER** to the PORTLAND, OR Police Department or to the police officer serving this order all guns, ammunition, gun licenses and FID cards. Your license to carry a gun, if any, and your FID card, if any, are suspended immediately.
- You must immediately surrender the items listed above, and also comply with all other Orders in this case.
 - Subject to certain exceptions, purchase and/or possession of a firearm and/or ammunition while this order is in effect is a federal crime. 18 U.S.C. §§ 922(g)(8) and 925.

ON THE NEXT SCHEDULED HEARING DATE, the Court will hear testimony and other evidence regarding Section 9 of this order, which involves support for the Plaintiff and/or the minor children. You are hereby ordered to bring with you to the next scheduled hearing date any financial records in your possession (including your most recent tax return and your last four paystubs) that provide evidence of your current income.

YOU ARE ALSO ORDERED _____

Plaintiff must appear at scheduled hearings, or this Order will expire. The Defendant may appear, with or without attorney, to oppose any extension or modification of this Order. If the Defendant does not the Order may be extended or modified as determined by the Judge. For good cause, either the Plaintiff or the Defendant may request the Court to modify this Order before its scheduled expiration date.

2)

EXHIBIT

PAGE 1 OF 2

HOUSE PREVENTION ORDER
(G.L. c. 209A) Page 2 of 2

DOCKET NO.
1352R0337

TRIAL COURT OF MASSACHUSETTS



Police reports are on file at the _____ Police Department.

16. OUTSTANDING WARRANTS FOR THE DEFENDANT'S ARREST:

(DOCKET #s) _____

(PCF #) _____

to _____

- ☐ 17. An imminent threat of bodily injury exists to the Plaintiff. Notice issued to _____ Police Department(s) by ☐ telephone ☐ other _____.

B. NOTICE TO LAW ENFORCEMENT

- ☒ 1. An appropriate law enforcement officer shall serve upon the Defendant in hand a copy of the Complaint and a certified copy of this Order (and Summons), and make return of service to this Court. If this box is checked ☐, the following alternative service may instead be made, but only if the officer is unable to deliver such copies in hand to the Defendant: _____
- ☐ 2. Defendant Information Form accompanies this Order.
- ☐ 3. Defendant has been served in hand by the Court's designee: Name _____ Date _____

DATE OF ORDER <u>11/21/13</u>	TIME OF ORDER <u>12:10</u>	<input type="checkbox"/> A.M. <input checked="" type="checkbox"/> P.M.	EXPIRATION DATE OF ORDER <u>12/2/13</u> at 4 P.M.	SIGNATURE OF JUDGE PRINT/TYPE NAME OF JUDGE <u>Singleton, J.</u>
The above and any subsequent Orders expire on the expiration dates indicated. Hearings on whether to continue and/or modify Orders will be held on dates and times indicated.				NEXT HEARING DATE: at <u>9</u> <input checked="" type="checkbox"/> A.M. <input type="checkbox"/> P.M. Courtroom <u>2</u>

C. MODIFICATION/EXTENSION

- ☐ This order was issued after a hearing at which the Plaintiff ☒ appeared ☐ did not appear and the Defendant ☐ appeared ☒ did not appear.

The Court has **ORDERED** that the prior order issued 11/21, 2013 be **MODIFIED** as follows:

☒ The expiration date of this order has been **EXTENDED** (See Below) ☐ **OTHER MODIFICATION(S)** _____

- ☒ **Firearm** surrender order continued. The items surrendered under paragraph 12 will NOT be returned since doing so would present a likelihood of abuse to the Plaintiff.

DATE OF THIS MODIFICATION: <u>12/2/13</u>	EXPIRATION DATE OF ORDER: <u>12/12/13</u> at 4 P.M.	SIGNATURE OF JUDGE PRINT/TYPE NAME OF JUDGE <u>Singleton, J.</u>
TIME OF MODIFICATION: <u>10:10</u>	<input checked="" type="checkbox"/> A.M. <input type="checkbox"/> P.M.	NEXT HEARING DATE: <u>12/12/13</u> at <u>9</u> <input checked="" type="checkbox"/> A.M. <input type="checkbox"/> P.M. Courtroom <u>2</u>

D. MODIFICATION/EXTENSION

- ☒ This order was issued after a hearing at which the Plaintiff ☒ appeared ☐ did not appear and the Defendant ☐ appeared ☒ did not appear.

The Court has **ORDERED** that the prior order issued 11/21, 2013 be **MODIFIED** as follows: DEF ATTN APPEARED

☒ The expiration date of this order has been **EXTENDED** (See Below) ☐ **OTHER MODIFICATION(S)** _____

- ☒ **Firearm** surrender order continued. The items surrendered under paragraph 12 will NOT be returned since doing so would present a likelihood of abuse to the Plaintiff.

DATE OF THIS MODIFICATION: <u>12/12/13</u>	EXPIRATION DATE OF ORDER: <u>12/12/14</u> at 4 P.M.	SIGNATURE OF JUDGE PRINT/TYPE NAME OF JUDGE <u>Singleton, J.</u>
TIME OF MODIFICATION: <u>10:10</u>	<input checked="" type="checkbox"/> A.M. <input type="checkbox"/> P.M.	NEXT HEARING DATE: <u>12/12/14</u> at <u>9</u> <input checked="" type="checkbox"/> A.M. <input type="checkbox"/> P.M. Courtroom <u>2</u>

E. PRIOR COURT ORDER TERMINATED

This Court's prior Order is terminated. Law enforcement agencies shall destroy all records of such Order.

- ☐ **TERMINATED AT PLAINTIFF'S REQUEST.**

SIGNATURE OF JUDGE PRINT/TYPE NAME OF JUDGE	DATE OF ORDER	TIME OF ORDER <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.
WITNESS - FIRST OR CHIEF JUSTICE <u>Roanne Sragow</u>	A true copy, attest (Asst.) Clerk/Magistrate/ (Asst.) Register of Probate <u>[Signature]</u>	

Main Form

Page 1 of 2


**CAMBRIDGE POLICE DEPARTMENT
CAMBRIDGE, MA**
INCIDENT # / REPORT #

14000595 / 1

OFFICER

GRASSI, JOSEPH

RANK

OFF

REVIEW STATUS

APPROVED

INCIDENT #14000595 DATA

As Of 01/27/2014 17:29:19

BASIC INFORMATIONCASE TITLE

VIOLAT. RESTRAINING ORDER

LOCATION

1107 CAMBRIDGE ST

APT/UNIT #DATE/TIME REPORTED

01/27/2014 15:11:52

DATE/TIME OCCURRED

On or about 01/27/2014 13:50

INCIDENT TYPE(S)/OFFENSE(S)

(209A/7) ABUSE PREVENTION ORDER, VIOLATE c209A S7

PERSONSROLENAMESEXRACE

VICTIM

PLUNKETT, NOIIN

FEMALE

WHITE

INVOLVED PARTY

MATTESON, ANDREW

MALE

WHITE

INVOLVED PARTY

LEVINE, DAVID

MALE

WHITE

OFFENDERSSTATUSNAMESEXRACE

SUSPECT

SCHWEIN, MICHAEL

MALE

WHITE

[NO VEHICLES]

[NO PROPERTY]

OFFICER REPORT: 14000595 - 1 / GRASSI, JOSEPH (610)DATE/TIME OF REPORT

01/27/2014 16:11:59

TYPE OF REPORT

INCIDENT

REVIEW STATUS

APPROVED

NARRATIVE

On 1/27/2014, Cambridge Police were dispatched to a Cambridge Street residence for a report of a violation of a restraining order.

On 1/27/2014, I Officer J. Grassi, #610 while assigned to 3R, was dispatched by ECC to 1107 Cambridge Street for a report of a violation of a restraining order. Upon arrival, I met Noirin Plunkett, DOB 1/27/1985. Ms. Plunkett stated that at her

<http://pd-rms2/QED/policepartner/common/crimeweb/incview/main.jsp?agency=CAM-PD...> 2/12/2014

EXHIBIT

PAGE 1 OF 2

residence at 1:50pm she received six white roses from Central Florist of 653 Mass Avenue, Cambridge. Plunkett stated that there was no note stating place of origin or who sent the flowers. Plunkett stated that she as a restraining order for her ex-boyfriend, Michael Schwern, DOB 4/20/1975 and strongly believed the flowers were sent by him in violation of the restraining order. Restraining order Docket # 1352R0337 was viewed: stated: Michael Schwern, DOB 4/20/75, issued by Judge Singleton, 11/21/13 with an expiration date of 12/12/14. Restraining order stated stay away. Plunkett further stated that she shared an interest in World War II history with Schwern. The significance of her birthdate and the six roses coincides with the execution of six members of the underground White Roses Group during World War II. Ms. Plunkett can be reached at 646-450-4596. Her companion, Andrew Matteson, DOB 10/7/1985 can be reached at 806-681-9870 and may be of assistance in reaching Plunkett by phone.

I met with David Levine, DOB 7/5/63, owner of Central Sq. Florist 617-354-7553. Mr. Levine stated that the order for the flowers was placed by a third party contractor, Task Rabbit. Task Rabbit takes orders are placed on line. The Task Rabbit contractor identified himself as Shane Windstorm, 23 Laurel Street, Watertown, MA and can be reached at 603-818-3540. Windstorm stated that the order was placed by a Michael S. A photo of Michael Schwern was sent to my cell phone by Matteson and shown to Levine. Levine stated that this was not the person who ordered the flowers.

OFFICER SIGNATURES

Reporting Officer:	_____	Date:	_____
	GRASSI,JOSEPH 610		
Approving Officer:	_____	Date:	_____
	KEOUGH,JOSEPH 440		